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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,431	08/14/2007	Miriam Kelley	9968-115U2	4949

570 7590 09/21/2010

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EXAMINER	
MOSSER, KATHLEEN MICHELE	

ART UNIT	PAPER NUMBER
3715	

NOTIFICATION DATE	DELIVERY MODE
09/21/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomail@panitchlaw.com

Office Action Summary	Application No.	Applicant(s)	
	10/598,431	KELLEY ET AL.	
	Examiner	Art Unit	
	Kathleen Mosser	3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 August 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *03/28/2007, 06/11/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In response to the preliminary amendment filed 06/10/2008, claims 1-6 have been cancelled, claims 7-12 and newly added claims 13-14 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 7-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Kelley et al (US 2004/0043365). Kelley discloses a book having a tactile page (a first of the page spreads) and a plurality of overlying pages overlying the tactile page (a second subsequent of the page spreads), the tactile page having a selectable tactile page object with a tactile feature, each overlying page having a selectable overlying-page object with a void in register with the tactile feature (selectable objects 36) [claims 7, 8 and 13]; a binding connecting the tactile page and the plurality of overlying pages (binding 17) [claims 7 and 8]; a base unit having a book retainer configured to releasably retain the binding (the housing assembly, paragraph 8 and 37) [claims 7, 8, and 13], wherein the book-well has a plurality of selectable book-well graphics (Figure 4) [claim 13]; electronic memory having stored therein data associated with the tactile feature, the selectable tactile page object, and each selectable overlying page object (ROM 146, paragraph 41) [claims 7, 8 and 13]; system electronics in the base unit, the system electronics comprising: a selection sensor configured to detect the selection of the at least one selectable object when the book is releasably retained by the book retainer and to detect selection of one book-well graphic of the plurality of selectable book-well graphics when the book is no in the book well (position sensor 232 the functionality of which is described in paragraph 58); an audio signal generator (speaker 178); and a

processor operatively coupled to the electronic memory, the selection sensor and the audio signal generator (microprocessor 294); wherein selection of the tactile feature causes the audio signal generator to produce an audible signal based on the data associated with the tactile feature and wherein selection of one of the book-well graphic causes the audio signal generator to produce an audible signal based on the data associated with the selected book-well graphic (paragraphs 70 and 74) [claim 7 and broader features of claim 8]. The binding comprising an elongated base having a plurality of rings engaging the first and second pages, the elongated base having a tab at one end and first and second outwardly facing side surfaces with a slot, specifically a generally D-Shape (claim 10) is shown in paragraph 47), and the book retainer having a binding receiving slot having a detent at one end and opposed first and second side walls, the detent configured fro receiving the tabs, each side wall having a tang configured for a snap-fit insertion in the corresponding slot in the first and second outwardly facing side surfaces of the elongated base is shown in Figures 6-8, as in claim 9. Kelley further teaches the inclusion of an optical sensor configured to irradiate and detect a page identifier (claim 13), particularly the use of emitter/detector pairs (claim 14) in paragraph 64. The details of the selection sensor, as recited in claim 14, are shown in paragraphs 53-57.

Kelley discloses an interactive learning system including: a book having at least one selectable object with a tactile feature (selectable content 36); a base unit having a book well with a book retainer configured to releasably retain the book, the book well having an upwardly facing surface with a plurality of selectable book-well graphics (Figure 4, paragraph 59); electronic memory having stored therein data associated with the tactile feature and the plurality of selectable book-well graphics (ROM 146, paragraph 41); system electronics in the base unit, the system electronics comprising: a selection sensor configured to detect the selection of the at least one selectable object when the book is releasably retained by the book retainer and to detect selection of one book-well graphic of the plurality of selectable book-well graphics when the book is no in the book well (position sensor 232 the functionality of which is described in paragraph 58); an audio signal generator (speaker 178); and a processor operatively coupled to the electronic memory, the selection sensor and the audio signal generator (microprocessor 294); wherein selection of the tactile feature causes the audio signal generator to produce an audible

signal based on the data associated with the tactile feature and wherein selection of one of the book-well graphic causes the audio signal generator to produce an audible signal based on the data associated with the selected book-well graphic (paragraphs 70 and 74), as in claim 11. With respect to claim 12, the recitation that the book-well graphics include keys simulating a musical keyboard is directed only to the printed indicia on present on the structural component of the learning system and does not structurally or functionally alter the claimed invention. It has been held that when the claimed printed matter is not functionally related to the substrate it will not patentably distinguish the invention from the prior art. *In re Ngai*, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004).

The applied reference has a common inventor(s) with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kathleen Mosser/
Primary Examiner, Art Unit 3715

September 14, 2010